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May 15, 2025

Via ECF

The Honorable Jennifer H. Rearden
United States District Court
Southern District of New York
500 Pearl Street, Room 1010
New York, NY 10007

Re: *Biden v. Fox News Network, LLC, et al.*, Case No. 1:24-cv-07814-JHR

Dear Judge Rearden,

I write to object to the letter submission by Defendants Fox News Network, LLC and Fox Corporation (collectively the “Fox Defendants”) made on the evening of May 14, 2025 [Dkt. 33 and Dkt. 33-1], shortly before the Court-ordered conference on May 16, 2025 at 10:00 a.m. for the Court to address Mr. Biden’s Motion to Remand and for Attorneys’ Fees and Costs, and to request that Mr. Engel’s letter and its accompanying declaration be stricken from the record.

While improperly disguised as a letter “to reflect the latest information as to the timing of service,” Dkt. 33 at 1, the Fox Defendants’ submission is nothing more than an improper and untimely sur-reply, filed without leave of Court, as required by Your Honor’s Individual Rules and Practices in Civil Cases, Paragraph 5.B.

On December 4, 2024, when Plaintiff filed his reply memorandum of law in further support of his motion to remand and for attorneys’ fees, he expressly argued that the Fox Defendants had waived their position that this Court has diversity jurisdiction over this action, since their memorandum in opposition to Plaintiff’s motion for remand did not contain any legal argument as to this position and nobody attested to the alleged fact that Fox News had not yet received papers

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from the Secretary of State in a sworn declaration. *See* Dkt. 30 at 1 n.1 (citing *Domingues v. Barton Chevrolet Cadillac*, 2021 WL 637016, at *3 (S.D.N.Y. Feb. 17, 2021) & *Altowaiti v. Cissna*, 2020 WL 2036703, at *4 (S.D.N.Y. Apr. 28, 2020)).

After Plaintiff pointed out that the argument about diversity jurisdiction had been waived, the Fox Defendants took no action for more than five months. Then, on the eve of the Court's conference, the Fox Defendants ambushed Plaintiff with both legal argument and a new declaration on the issue they previously waived. There is no reason these submissions could not have been made sooner (should leave of Court had been sought and granted). Indeed, the first six paragraphs of the Declaration of Joy Dumlao (a Senior Litigation Paralegal at Fox Corporation) could have been submitted in opposition to Mr. Biden's motion to remand and for attorneys' fees. Instead, as Plaintiff pointed out in his reply, "while claiming in their memorandum that Fox News has not yet received papers from the Secretary of State, Dkt. 27 at 3, nobody attest[ed] to this alleged fact in a sworn declaration." Dkt. 30 at 1 n.1. In short, this information is not new, and the Fox Defendants cannot manufacture new information, and flout court-ordered deadlines, by voluntarily taking action at a late date.

I am currently out of the country. While I am prepared to address the legal arguments in Mr. Biden's Motion to Remand and for Attorneys' Fees and Costs, as scheduled, I am unable to investigate and respond to the Fox Defendants' new allegations in time for tomorrow morning's conference. I therefore respectfully request that the Court strike the Fox Defendants' untimely submissions [Dkt. 33 and Dkt. 33-1] from the record and/or not consider them in ruling on Mr. Biden's Motion to Remand and for Attorneys' Fees and Costs. The Second Circuit has explicitly recognized the district court's power to strike unauthorized sur-replies. *See Laguerre v. Nat'l Grid*

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USA, 2022 WL 728819, at *5 n.7 (2d Cir. 2022) (citing *Gladstone Ford v. N.Y.C. Transit Auth.*, 43 F. App'x 445, 449 (2d Cir. 2002)). In the event the Court is inclined to consider such submissions in its ruling, Plaintiff respectfully requests an adjournment of the May 16, 2025 conference to give him an opportunity to investigate and respond to the Fox Defendants' new submissions.

Very truly yours,

/s/ Tina Glandian

Tina Glandian
GERAGOS & GERAGOS

cc: All counsel of record (via ECF)